

**BEFORE THE
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION**

In the Matter of:

RICHARD W. PINTO,

Respondent.

Docket No. FMCSA-2006-25382¹
(Eastern Service Center)

FINAL ORDER

1. Background

On April 24, 2006, Claimant, the Field Administrator of the Eastern Service Center, Federal Motor Carrier Safety Administration (FMCSA), issued a Notice of Claim to Respondent, Richard W. Pinto, proposing a civil penalty of \$4,500 for one alleged violation of the Safety Fitness Procedures. Specifically, the Notice of Claim, which was based on a September 30, 2005, inspection of a commercial motor vehicle operated by Respondent, charged Respondent with one violation of 49 CFR 385.325(c)/385.337(b), with a proposed civil penalty of \$4,500, for operating a commercial motor vehicle in interstate commerce on or after the effective date of an out-of-service (OOS) order.² The "Statement of Charges" portion of the Notice of Claim alleged that Respondent operated a commercial motor vehicle on September 30, 2005, after having been ordered to cease

¹ The prior case number of this matter was NJ-2006-0240-US0170.

² Claimant submitted some of the same evidentiary documents twice – as exhibits to the "Field Administrator's Submission of Evidence" (Claimant's Evidence) and as attachments to the "Submission of Evidence and Memorandum of Law in Support of Submission of Evidence" (Claimant's Memorandum). For the Notice of Claim, see Exhibit A to Claimant's Evidence and Attachment 2 to Claimant's Memorandum. In addition to attachments, exhibits are also contained in Claimant's Memorandum; these exhibits are cited in the Affidavit of Danny Swift, which is Attachment 1 to Claimant's Memorandum. See note 7, *infra*.

all interstate transportation operations on June 16, 2005, for failing to agree, in writing, to undergo a “new entrant” safety audit. The Notice of Claim cited Respondent’s DOT number as 1356560.³

On May 8, 2006, Respondent replied to the Notice of Claim, contesting the charge and requesting the submission of written evidence without a hearing.⁴ Respondent averred that, after the issuance of the June 16, 2005, OOS order, and in response to its reapplication, FMCSA issued Respondent a new DOT number on September 8, 2005; by mistake, on September 30, 2005, Respondent’s owner gave the state inspector the revoked DOT number that was subject to the OOS order instead of the new DOT number issued on September 8, 2005. Respondent’s Reply stated that the mistake was caused by its owner’s stress as he was preparing to leave for New Orleans to assist with the Hurricane Katrina disaster relief. Respondent submitted in evidence a letter from FMCSA, dated September 8, 2005, informing Respondent that its application for a new entrant registration was approved, and it was assigned US DOT number 1413643.⁵

In his July 12, 2006, “Submission of Evidence and Memorandum of Law in Support of the Submission of Evidence” (Claimant’s Memorandum), Claimant acknowledged Respondent’s evidence that it had received a new DOT number before the date of the alleged violation. It is noteworthy that Claimant did not attempt to counter it. Only in the section on the appropriateness of the civil penalty did Claimant address the issue:

The evidence presented in this matter illustrates that Respondent avoided its New Entrant safety audit under its

³ *Id.*

⁴ See Exhibit B to Claimant’s Evidence and Attachment 3 to Claimant’s Memorandum.

⁵ *Id.*

original DOT number and then, after being revoked under one DOT number, reapplied for another. To allow such practices to go unanswered places the motoring public at risk as FMCSA will not have the means of auditing a carrier that continually reinvents itself.⁶

2. Discussion

Claimant's argument goes only to the amount of the civil penalty, not whether the violation occurred. Yet, even if we were to view the argument as an answer to Respondent's evidence concerning the occurrence of the violation, it fails. Claimant contended that the practice of allowing a carrier to reapply for another DOT number after the original DOT number was revoked "places the motoring public at risk." This ignores 49 CFR 385.329(a), which specifically permits "[a] new entrant whose U.S. DOT registration has been revoked and whose operations have been placed OOS by the FMCSA [to] reapply...." Section 385.329(b) states that "[t]he motor carrier will be required to initiate the process from the beginning." In fact, the June 16, 2005, "Order to Revoke" stated that Respondent may reapply "via the FMCSA website ... or by submitting a MCS-150 (Motor Carrier Identification Report) Form."⁷

Although there is no direct evidence of Respondent's reapplication, Claimant acknowledged that Respondent did reapply for a new DOT number. The evidence shows that FMCSA granted authority to Respondent on September 8, 2005, to operate in interstate commerce under DOT number 1413643.⁸ There is no evidence that Respondent changed its name in its reapplication in order to mislead the Agency and

⁶ See Claimant's Memorandum, the fourth of five unnumbered pages.

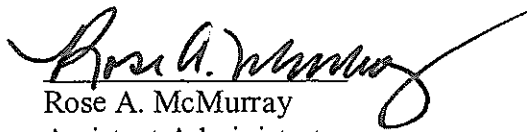
⁷ See Exhibit 2 to Attachment 1 to Claimant's Memorandum. The MCS-150 Form is an application for a U.S. DOT number.

⁸ See Attachment 3 to Claimant's Memorandum. According to the Agency's Safety and Fitness Electronic Records System (<http://www.saferys.org/>), DOT number 1413643 is inactive.

“reinvent itself” It did not need to, because FMCSA regulations permitted the reapplication.

Claimant has not met his burden. Because it is clear that Respondent had the authority to operate on September 30, 2005, the date of the alleged violation, no violation occurred. Moreover, after having received Respondent’s evidence that demonstrated that it had authority to operate on the date of the alleged violation, it is not clear why Claimant did not withdraw his prosecution in this matter. Respondent submitted convincing evidence that its owner inadvertently provided the inspecting officer with the wrong DOT number. No violation is found, and this matter is dismissed with prejudice.⁹

It Is So Ordered.


Rose A. McMurray
Assistant Administrator
Federal Motor Carrier Safety Administration

6-10-05
Date

⁹ Pursuant to 49 CFR 386.64, a petition for reconsideration may be submitted within 20 days of the issuance of this Final Order.

CERTIFICATE OF SERVICE

This is to certify that on this 11 day of June, 2009, the undersigned mailed or delivered, as specified, the designated number of copies of the foregoing document to the persons listed below.

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